Filed 1/7/11 In re F.S. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re F.S., et al., Persons Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. D.S., et al., Defendants and Appellants.	E050507 (Super.Ct.No. RIJ116649) OPINION

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Merrill Lee Toole, under appointment by the Court of Appeal, for Defendant and Appellant T.S. (mother).

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and Appellant D.S. (father).

Pamela J. Walls, County Counsel, and Carole A. Nunes Fong, Deputy County Counsel, for Plaintiff and Respondent.

Leslie A. Barry, under appointment by the Court of Appeal, for Minors.

T.S. and D.S. are the parents of two children, F.S. (born December 2004) and V.S. (born April 2008), who are the subjects of this appeal. Each parent argues separately that the juvenile court erred when it determined at the six-month review hearing that the Riverside County Department of Public Social Services (DPSS) had complied with the notice provisions of the Indian Child Welfare Act (ICWA) and that ICWA does not apply. Each parent argues the court's orders terminating parental rights at the hearing held under Welfare and Institutions Code section 366.26[1] should be conditionally reversed pending completion of these ICWA requirements. As discussed below, the juvenile court did not err when it found that ICWA does not apply here. This is because DPSS did not "know or have reason to know" that the children have Native American heritage based on information supplied by the family member most knowledgeable about the issue and through whom the claim of such heritage ran.

SUMMARY OF FACTS AND PROCEDURE

Detention/Jurisdiction/Disposition

On June 23, 2008, the children and their two half-sisters (all are mother's children) were removed from mother and father's home. Then-14-year-old T.K. had revealed to a school counselor that father had sexually abused her from the ages of about seven to

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

about twelve, and that she suspected father was abusing her 11-year-old sister, M.S.[2] The responding social worker wrote in the detention report that "I spoke with the family members about any Indian Ancestry. The family denied any Indian Ancestry." The Judicial Council Form, ICWA-101(A), dated June 25, 2008, states that the children had "no known Indian ancestry" and lists mother as the person questioned.

DPSS filed a juvenile dependency petition regarding F.S. and V.S. alleging, pursuant to section 300, subdivision (j), that the children's siblings had been abused and there was a substantial risk that they would be abused. At the detention hearing held on June 26, 2008, the court detained all four children.

On June 30, 2008, each parent signed a separate ICWA-020 and checked the box stating "I have no Indian ancestry as far as I know." On July 17, 2008, mother told the social worker that she believed her own paternal grandfather (the children's maternal great-grandfather) has Blackfoot Indian heritage and provided his address and telephone number. On July 20, the social worker telephoned the maternal great-grandfather. He told the social worker that "there had been various familial 'rumors' about American Indian heritage, and that the rumors changed over time as to which tribe that family might be affiliated. He reported that about five years ago his sister . . . conducted personal research to determine whether or not there was tribal affiliation. She was unable to find any evidence to support the family's 'rumors.' . . . [She also] contracted with Mormon

[2] T.K. and M.S. are not the subjects of this appeal.

Church's Genealogy Services, and that this organization determined there was not any evidence to support American Indian heritage or ancestry within his family."

On September 8, 2008, DPSS sent a form ICWA-030 "Notice of Child Custody Proceeding for Indian Child" to the Blackfeet Nation and to the Department of the Interior. The notice contained information about mother and father, a name, address and birth date for the paternal grandmother, but nothing about the maternal great-grandfather with whom the social worker had spoken, or any other relatives.

On September 24, 2008, DPSS received a letter from the Blackfeet Tribe, dated September 19, stating that it could not determine whether the children were eligible for enrollment unless additional information were to be provided. The letter references an enclosed Family Tree Chart to be filled out, including maiden names and dates of birth. On September 21, 2008, a representative from the Blackfeet Tribe wrote a second letter stating that she could not find any of the children in the tribal enrollment records based on the information given, and that neither of the children was an "Indian Child" under ICWA. The record does not indicate that DPSS provided the Blackfeet Tribe with additional information.

After several continuances, the contested jurisdiction and disposition hearing was held on November 20, 2008. DPSS recommended father not receive reunification services for F.S. and V.S. under section 361.5, subdivision (b)(6). After testimony and argument, the juvenile court sustained the allegation of abuse of sibling in the section 300 petitions regarding F.S. and V.S. and denied father reunification services under section 361.5, subdivision (b)(6). The court granted reunification services to mother. The court

noted that there was reason to know the children were Indian children under ICWA, that DPSS had provided notice to all identified tribes, and that ICWA may apply. Father challenged the jurisdiction and disposition orders in an appeal filed January 27, 2009. On May 21, 2010, this court filed its opinion affirming these orders in case No. E047634.

Six-Month Hearing and Challenged ICWA Determination

The six-month review hearing was held on February 23, 2009. In the report prepared for that hearing, the social worker related the ICWA history of the case, including the court's finding on November 20, 2008, that ICWA may apply to the case. The social worker also noted that she had telephoned the Blackfeet Tribe in January, and had been told that none of the persons listed on the form ICWA-030 were enrolled tribal members. The social worker thus asked the court to find that ICWA does not apply to the case. At the conclusion of the six-month review hearing, the juvenile court stated, "I have reviewed all the ICWA notices that were prepared in this particular case and the responses. In particular, those from the Blackfeet tribe. And at this time I do find that ICWA does not apply, and the minute order should so reflect." The court also ordered six more months of reunification services to mother.

Twelve-Month Hearing

The 12-month review hearing was held on October 28, 2009. The juvenile court terminated mother's reunification services and set a section 366.26 hearing.

Section 366.26 Hearing

The section 366.26 hearing was held on March 18 and 19, 2010. The juvenile court denied both mother's and father's motions to remove their respective counsel

pursuant to *People v. Marsden* (1970) 2 Cal.3d 118. The court also denied father's oral motion under section 388. Each parent argued that the parental bond exception to the preference for adoption applied because they had visited regularly with the children and had maintained a bond (§ 366.26, subd. (c)(1)(B)(i)). Mother also argues that the sibling bond exception applied (§ 366.26, subd. (c)(1)(B)(v)). At the conclusion of the hearing, the juvenile court terminated mother's and father's parental rights and selected adoption by their foster-adopt parents as the children's permanent plan. Mother and father each filed a timely notice of appeal.

DISCUSSION

Mother and father each argue that the juvenile court erred when it determined at the six-month review hearing that ICWA does not apply to this case because it based this conclusion on ICWA notices that were deficient for lack of sufficient information. As discussed below, we conclude that DPSS was never required to provide ICWA notice in the first place because the information provided by the maternal great-grandfather dispelled any reasonable suspicion that the children could be Indian children.

ICWA sets minimum standards for removing Indian children from their families, and its purpose is to protect the security and stability of Indian families and tribes when it becomes necessary to place an Indian child in foster care or in an adoptive home. (*In re Jeremiah G.* (2009) 172 Cal.App.4th 1514, 1520 (*Jeremiah G.*).) Whenever the state "knows or has reason to know" that an Indian child is involved in an involuntary dependency proceeding, and the state seeks to place the child in foster care or terminate parental rights, it must notify the child's Indian tribe of the proceedings and its right to

intervene. (25 U.S.C. §§ 1903(1), 1911(a)-(c), 1912-1921.) "Indian child" is defined as a child who is either (1) "a member of an Indian tribe" or (2) "eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U. S.C. § 1903(4).)

To invoke the notice requirements of ICWA, there must be "more than a bare suggestion that a child might be an Indian child." (*Jeremiah G., supra*, 172 Cal.App.4th at p. 1520.) In that case, the father told the juvenile court that he might have some Native American heritage and that the matter needed to be researched. The father later retracted that claim. The appellate court held that, because the basis upon which to suspect that Jeremiah might be an Indian child had been debunked, ICWA noticing procedures were unnecessary. (*Id.* at p. 1521.) Here, DPSS did not know or have reason to know that the children were Indian children. This is because the person in the children's family with the most knowledge on this subject, (and the person to whom mother pointed as the source of the children's Native American heritage) their paternal great-grandfather, debunked any possibility of such heritage. The paternal great-grandfather reported that the alleged Native American ancestry was based on "rumors" that had circulated within the family, that the rumors themselves had changed as to even which tribe the family was associated with, that his sister had personally researched the family's genealogy without finding any indication of Native American ancestry, and that even the Mormon Church's Genealogy Services were unable to provide any evidence of such ancestry or heritage. This information indicates that not even a "bare suggestion" exists that the children may have Native American ancestry. Therefore, DPSS had no duty in the first place to

provide ICWA notice and thus the juvenile court did not err when it determined at the six-month hearing that ICWA does not apply here.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P.J.

We concur:

HOLLENHORST
J.

KING
J.